POH KIT & 6 ORS.

v.

LEMBAGA LETRIK NEGARA, TANAH MELAYU

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. P446 OF 1979]
27 MARCH 1987

TORT: *Claim for damages - For conversion of property - Compensation - Whether defendant under a duty to acquire affected areas and pay damages for such acquisition - Wayleave agreement - Estoppel.*

The plaintiffs' claim in this suit is for damages on the ground of conversion by the defendant of their land in Selangor. The original owners of the land had by an agreement sold their land to the plaintiffs on 3 July 1973. The defendant had prior to this converted 20.054 acres (out of 36.503 acres the subject matter of the dispute) to its use before the plaintiffs became the registered owners and it only converted the remaining 16.449 acres in July 1979. The defendant had agreed to compensate the plaintiffs for the latter conversion. The plaintiffs, *inter alia*, maintained that compensation should be paid for the 20.054 acres as well with effect from 3 July 1973.

The issues to be determined were:

1. Whether the plaintiffs were entitled to claim damages for conversion of the 20.054 acres by the defendant as well as the loss of use of the land.
2. Whether the defendant was under a duty to acquire the affected areas and to pay damages for such acquisition.
3. Whether a wayleave agreement was necessary.
4. The effect and scope of s. 61 of the Electricity Act 1949.

Held:

[1] The plaintiffs are estopped from claiming damages for the 20.054 acres as there was evidence that the defendant was granted a wayleave by the original owners.

[2] There is no mandatory obligation for the defendant to enter into any wayleave agreement under the Electricity Act 1949.

[3] The defendant is not statutorily bound to acquire the said land and to pay compensation to the plaintiffs for loss of use of such land.

[4] Under s. 61 the plaintiffs are barred from coming to Court to get more compensation than that assessed by the Collector. It is only where the amount of compensation has not been agreed upon that an aggrieved party can question the Collector's award in the High Court by way of *certiorari*. This should have been followed by the plaintiffs in this case.

[Plaintiffs' claim dismissed with costs.]

Cases referred to:

Government of the State of Negeri Sembilan & Anor. v. Yap Chong Lan & 12 Ors. [1984] 1 CLJ (Rep) 144
Re Gilmore's Application [1957] 1 All ER 796
Tehrani & Anor. v. Rostron [1971] 3 All ER 790

Legislation referred to:
Electricity Act 1949, ss. 43(1), 52, 53, (1) to (9), 54(6), 55, 56, 58(1), (2), 61

For the plaintiffs - J.G. Bernatt; M/s. Baharuddin, Bernatt Tan & Ker
For the defendant - Kalvindar Kaur, (Gita Radha Krishnan with her); M/s. Tahir & Salleh

JUDGMENT

Siti Norma Yaakob J:

The plaintiffs' claim in this suit is for damages for the alleged trespass and conversion by the defendant of their lands, Lots 1936 and 1940 held under Grants 9227 and 10800 in the Mukim of Serendah, Selangor. They allege that without their consent the defendant had trespassed into their lands and had converted an area of 36.503 acres by installing high tension transmission lines that stretch from Rawang to Chenderiang and in the process, had cut and fell the oil palm and rubber trees that had been grown in the affected areas. However, at the trial, the plaintiffs dropped their cause of action on trespass and confined their claim for damages on the ground of conversion only.

The undisputed facts show that the original owners of the lands had, by an agreement dated 3 July 1973, (AB15), sold their lands to the plaintiffs and since 30 August 1973, the plaintiffs had been the registered proprietors of the lands. The total area of the lands is 249¼ acres and the 36.503 acres that is the subject matter of the present dispute is part of that total area.

Out of the 36.503 acres, the defendant had already converted 20.054 acres to its use before the plaintiffs became the registered owners and that it only converted the remaining area of 16.449 acres in July 1979, pursuant to s. 53 of the Electricity Act 1949 (the Act). The defendant agreed to compensate the plaintiffs for all the oil palm and rubber trees that had been cut and felled in the 16.449 acres in the sum of RM24,202 which had been assessed by the Collector of Land Revenue. The plaintiffs consider that the amount of compensation is insufficient and they also maintain that the defendant should also compensate them for the loss of use of not only the 16.449 acres with effect from 1 August 1979, but also the 20.054 acres with effect from 3 July 1973.

The issues that need to be determined can be summarised as follows.

1. Whether the plaintiffs are entitled to claim damages for the conversion of the 20.054 acres by the defendant as well as the loss of use of the said land.
2. Whether the defendant is under a duty to acquire the affected areas and to pay damages for such acquisition.
3. Whether a wayleave agreement is necessary in the circumstances of this case.
4. The effect and scope of s. 61 of the Act.

The short answer to the first issue is that the plaintiffs cannot claim damages for the defendant's use of the 20.054 acres as there is undisputed evidence that the defendant was granted a wayleave by the original owners pursuant to a notice dated 30 July 1959 issued by the defendant under s. 53 of the Act and that it had also paid compensation to the original owners. As this event took place before the plaintiffs are estopped from claiming damages for such conversion as they must have been aware that they could not utilize the 20.054 acres of the lands they had purchased in view of the wayleave granted to the defendant by their predecessors in title.

As purchasers, the plaintiffs should have enquired and inspected any obstacle or encumbrance that stood in their way of their absolute use and possession of their lands and since the overhead transmission line are quite visible as can be seen in the photographs exhibited in P1, this should have put them on guard to enquire as to whether the presence of such installations would affect their exclusive use of the land. If they now complain that they had purchased the land without such prior knowledge, they have only themselves to blame for not acting prudently but they cannot use this lack of knowledge against the defendant. In any event, following the decision of the *Government of the State of Negeri Sembilan and Anor. v. Yap Chong Lan & 12 Ors.* [1984] 1 CLJ (Rep) 144, the doctrine of estoppel cannot be raised against the defendant to prevent it from exercising its statutory duties under the Act.

The fact that there is no endorsement of the existence of a wayleave agreement in the register document of title can only mean that no such agreement was executed by the defendant with the original owners or if there had been one, a copy of it had not been deposited with the Registrar of Titles to enable him to enter the endorsement in the title.

Section 56 of the Act makes provision for the defendant to enter a wayleave agreement with the owner or occupier of any land for the purpose of carrying out supply line across the land. Reading s. 56 together with s. 53 and 55, it is my considered opinion that s. 56 merely states that notwithstanding ss. 53 or 55, the defendant may execute a wayleave agreement with the land owner or occupier and when it does, an endorsement of that fact shall appear in the register document of title provided the original of such an agreement is produced and a copy deposited with the Registrar of Titles. Since the execution of such an agreement is not a mandatory provision under the Act, it only stands to reason that the absence of an endorsement in the register document of title can only mean that either no such agreement had been executed by the defendant with the original owners or if there had been one, the original had not been produced and a copy of it had not been deposited with the Registrar of Titles to enable him to make the necessary endorsement. In all probability, the original owners must have given a written consent and under the Act, this is sufficient for the defendant to enter into the land and effect the installation. To that extent there is no mandatory obligation on the part of the defendant to enter into any wayleave agreement with any owner or occupier of land when it requires the land from its use under the Act. A written consent from the owner or occupier is sufficient to enable the defendant to enter and execute all works for which the consent is granted.

I now turn to consider whether the defendant is statutorily bound to acquire all the affected areas and to pay compensation to the plaintiffs for loss of use of such areas. Under the Act, the defendant has no power to acquire land but the State Authority may acquire such lands for the defendant's purposes under s. 43(1) read with s. 53(8). Acquisition by the State Authority under these sections can only happen when the defendant fails to obtain the agreement of the owner of the land over which it wishes to use. Since the defendant had already obtained the unqualified written consent of the plaintiffs at AB26 to enter and effect the works as specified in the notice at AB86, there is therefore no necessity for the State Authority to direct the plaintiffs' lands to be acquired to enable the defendant to carry out its installation works.

Coming now to the facts of this case, I start with AB86, the undated notice of intention to enter the plaintiffs' lands issued by the defendant pursuant to s. 53(2) of the Act which under s. 53(1) gives power to the defendant to enter and effect all works "for the purpose of installing any system of distribution of energy".

The objection taken by the plaintiffs on this notice is that it is invalid as being undated and not sent by registered post. Admittedly it is undated and I attribute this to nothing more than an administrative slip up, but nonetheless the plaintiffs have admitted receiving it and have also confirmed its receipt when responding to it at AB26. As for the mode of service, s. 53(3) merely states that it may be sent by registered post and left at the usual or last place of abode of the person to whom the notice is intended. Since service by registered post is not a mandatory requirement and since the purpose of the notice is to inform the plaintiffs of the intention to enter their lands and effect the works specified in the notice and the plaintiffs had in fact received AB86, there is therefore no merit to the plaintiffs' objection that the notice is invalid.

The works as specified in the notice involved the laying of transmission lines and the notice also gave the plaintiffs 14 days from the time of service of the notice to place their objection either orally or in writing with the Collector of Land Revenue, Kuala Kubu Baharu, pursuant to s. 53(4). The 1st plaintiff admitted that he did not lodge any objection within the time limited and under s. 53(5) the defendant is empowered to enter the plaintiffs' lands and do all the works specified in the notice. However the defendant refrained from doing so until it received AB26 dated 18 September 1978, wherein the plaintiffs gave their unqualified consent to the defendant to enter their lands and to do all the works specified in the notice. However, in the same letter they suggested that the defendant buy the affected land at the current market value but when responding to this suggestion, the defendant, at AB27, pointed out that it was not the usual practice to acquire or purchase the affected land as what it was seeking was only a wayleave to lay the transmission lines. It also explained that the affected land continues to belong to the plaintiffs and it would pay reasonable compensation for the damages done to the trees and buildings as a result of the installation works.

On 7 March 1979, the plaintiffs were called to attend an enquiry before the Collector of Land Revenue Ulu Selangor, to determine the amount of compensation to be paid by the defendant to the plaintiffs for the damage done to the trees in the 16.449 acres. At this enquiry which was conducted under s. 58(1), both the plaintiffs and defendant were present and the Collector proceeded to assess the compensation payable to the damaged trees on rates fixed by the Ministry of Agriculture as seen at AB36. The compensation assessed at RM24,202, was accepted by the plaintiffs under protest but nonetheless they agreed to the defendant entering their land and the final orders issued by the Collector in his handwritten note at AB89 were that the defendant can enter the plaintiffs' land and pay RM24,202 as compensation to the plaintiffs.

It is interesting to note that all the documentary evidence at AB90-92 speaks only of the plaintiffs' objection to the amount of compensation payable and there is no mention of any claim for loss of use of the affected land. Although they were not happy with the compensation awarded by the Collector, it is not clear whether the plaintiffs formally appealed to the State Authority under s. 58(2). Be that as it may, the Collector at AB91, conveyed the plaintiffs' objection to the State Authority together with his recommendations and at a meeting on 10 April 1980, the State Authority dismissed the plaintiffs' objection as to the sufficiency in the amount of compensation and this decision was communicated to the plaintiffs at AB47. Under s. 58(2), the decision of the State Authority is final but nonetheless, the defendant still entertained the plaintiffs' objection after April 1980, but by this time, the plaintiffs' objection had extended to a claim for compensation for the loss of use of the affected land as well and that the defendant should have acquired the land.

As the plaintiffs' objection all along had been on the insufficiency of the Collector's award, it is now too late to object to matters which had not been raised earlier. From the very beginning the plaintiffs had not objected to the defendant entering the land. They even admitted through the evidence of the first plaintiff that they never placed any oral or written objection within the 14 days stipulated in AB86. Be that as it may, when they did object after the enquiry was held on 7 March 1979, their objection was always limited to the amount of compensation assessed by the Collector. They never raised the issue of acquisition or compensation for loss of use of their lands. This was the position up to 9 October 1980 when the plaintiffs who were then represented by their solicitors, met the Collector but they did not raise the issue of acquisition and compensation. The minutes of that meeting at AB94-96 testifies to that. In any event, for reasons that I had given earlier, the defendant, on its own, has no power to acquire the plaintiffs' land or pay compensation for such acquisition.

The plaintiffs also seek determination of the effect and scope of s. 61 which reads as follows.

> Except as otherwise provided in this Act, in all cases where compensation is directed to be paid by this Act the amount of the compensation may, in default of agreement, be claimed and determined by action or suit in any Court.

The first four words "except as otherwise provided" clearly shows that where in the Act provision has been made for the payment of compensation, the jurisdiction of the Court shall not be invoked unless there has been default in agreement as to the amount of compensation payable. Section 53(4) to (9) clearly sets out the procedure to be adopted by any land owner or occupier when his land has been affected by works carried out by the defendant under ss. 52 to 54. Section 58(2) goes further to state that the decision of the State Authority on the objection to the Collector's assessment of compensation payable under s. 53(6) shall be final. This mandatory provision lends further support that s. 61 must be interpreted to mean that the plaintiffs are barred from coming to Court to get more compensation than that assessed by the Collector.

However the finality of s. 58(2) does not take away the right of the plaintiffs to challenge the Collector's administrative act in assessing the amount of compensation by way of *certiorari* as the decisions of the Court of Appeal in *Re Gilmore's Application* [1957] 1 All ER 796 and *Tehrani & Anor v. Rostron* [1971] 3 All ER 790 are authorities for the proposition that the remedy of *certiorari* is never taken away by any statute as the word "final" means final on the fact but not final on the law. To that end, it is only in circumstances where there has not been agreement as to the amount of compensation that an aggrieved party can have the Collector's award scrutinised by the High Court by way of *certiorari.* This should have been followed by the plaintiffs in this case.

On the facts and circumstances of this case, I am satisfied that the defendant had accorded every opportunity to the plaintiffs to exercise their rights under the Act. In view of their unqualified consent at AB26, they chose not to place any objection either verbally or in writing within the 14 days specified in s. 53(4). It was only following an enquiry held under s. 54(6) on 7 March 1979 that they objected to that part of the Collector's order as to the amount of compensation to be paid by the defendant. In this respect, the plaintiffs alleged that the Collector took only 2 minutes to arrive at his decision and that he hardly listened to the plaintiffs' objection. The documentary evidence at AB36 shows how the amount of compensation for the damaged trees had been arrived at and as I do not see any reason why the Collector should refuse to hear the plaintiffs' objection and the fact that he had noted their protest against the amount of compensation awarded clearly shows that he had

allowed every opportunity for the plaintiffs to voice their grievances. The fact that this does not appear at AB98 clearly shows that the only objection put forward by the plaintiffs was to the amount of compensation payable. They had never claimed compensation for loss of use of the land and neither have they raised the issue of acquisition which in any event, they were not entitled to demand as of right from the defendant. On the contrary, there is documentary evidence that the plaintiffs had tried every means to obstruct the defendant from carrying out its lawful installations on the land. For the reasons that I have given, the plaintiffs cannot possibly succeed on their claim and I accordingly dismiss it with costs.

Also found at [1988] 1 CLJ 520